IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1546 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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MAULANA NASIRUDDIN MOHD. HANIFUDDIN - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR LR PATHAN FOR MR IMRAN H PATHAN for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA
and
HONOURABLE MR.JUSTICE A.S.DAVE
Date : 20/04/2006

C.A.V. JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal has been filed by the appellant for releasing him on bail in connection with Crime Register NO.I-6 of 2003 registered with DCB

(Crime Branch) Police Station, Ahmedabad.

2. The facts in short are that an FIR was lodged on 4-4-2003 with DCB Police Station, Ahmedabad alleging that a conspiracy was hatched by Mufti Sufiyan and Rasulkhan Party at Ahmedabad and Hyderabad to commit murder of Hindu leaders through boys by imparting them training in arms in Pakistan. The complaint was filed for the alleged commission of offences punishable under Secs.120(B), 121, 121(A), 122, 123 of the Indian Penal Code, Sec.25(1)b, c, 27 and 29 of Arms Act. Thereafter on 19-4-2003, in pursuance of report of Police Inspector, Mr.M.M.Vaghela, Secs.3(1)ab, 3(3), 4, 20, 21(2)b, 22(3)a-b of POTA, 2002 were added. The charge sheet was filed in POTA Court qua the co-accused on 10-9-2003 wherein 39 accused were shown as arrested and 43 accused as absconding. Confessional statements 28 in number were recorded during the remand period and statements of 43 witnesses were taken. On 21-1-2004,

supplementary charge sheet was filed showing 8 accused including 7 absconding accused of first charge sheet as arrested and 7 new accused were named as wanted and 5 statements under Sec.164 of Criminal Procedure were recorded and confessional statements of 8 accused were attached. The appellant filed Special Criminal Application No.377 of 2004 in the High Court for quashing of proceedings which, according to the appellant is pending till date. The appellant was released on bail in another offence at Hyderabad on health ground. Thereafter on 30-10-2004 he was arrested in connection with the present offence by the Gujarat Police. He was produced before Special POTA Court on 2-11-2004 and was remanded till 9-11-2004. Request for further remand was rejected and the appellant was sent to judicial custody. Charge sheet qua the appellant was filed in Special POTA Court on 27-1-2005. The appellant moved an application for bail being

Cri. Misc.Appln.No.762 of 2005. However, it was rejected by the learned Special (POTA) Judge, vide order dated 24-5-2005 which is giving to rise prefer the present appeal.

3. We have heard Mr.L.R.Pathan for Mr.Imran Pathan for the appellant and learned APP, Mr.R.C.Kodekar for the for the respondent-State.

4. It was mainly submitted by Mr.Pathan that there is no evidence appearing against the present appellant except the alleged confessional statement recorded on 7-11-2004 by DCP. According to him, said confessional statement is unsustainable in law as it was not in the language known to the appellant nor was it in the handwriting of the accused. It was further submitted that the said confessional statement was retracted by the appellant which goes to show that said confessional statement is concocted so as to involve the appellant falsely in the offence in question and hence,

no reliance be placed on the same. It was further submitted that the appellant never provoked or instigated any youth to go to Pakistan for Jihad training. It was further submitted that neither of the prime accused has stated in their confessional statements of having inspired by the speeches of the present appellant and reference of the appellant was never stated by any witness. It was further submitted that during the course of police custody and remand, no incriminating articles were recovered by the investigating agency from the present appellant. It was also submitted that serious acts in the aftermath of Godhra were done by Rauf and not by the appellant and in absence of any prima facie material connecting him with the offence in question even remotest, he may be released on bail on any stringent conditions. It was also submitted that the appellant is a businessman carrying on business for the last 32 years and

has a permanent address and hence, he is not likely to flee away or tamper with the evidence if released on bail.

5. Learned APP, Mr.R.C.Kodekar, for the respondent-State, on the other hand, strongly resisted the appeal mainly by contending that there is a confessional statement of the accused recorded under Sec.32 of POTA. Moreover, it is the appellant who has inspired the Muslim boys to take Jihad training in Pakistan. It was further contended that there was nothing on record to indicate that the appellant accused was coerced to give the confessional statement as recorded under Sec.32 of POTA. According to him, the confessional statement might have been retracted on the advice of expert but said retraction has not been within the time stipulated and hence, when there is a substantive piece of evidence in the form of confessional statement of the accused recorded under Sec.32 along with the role

alleged to have been played by him, the appellant should not be released on bail.

6. On going through the investigation papers shown to us by the learned counsel for the respective parties together with the reasoned order of the learned Special POTA Court, it appears that during the course of investigation, confessional statement of the appellant under Sec.32 of the POTA has been recorded by DCP, an authorized Officer under the said provision, which is part of the charge sheet. It is required to be noted that said confessional statement has been retracted by the appellant accused on expiry of 40 days by sending a letter to the Special POTA Court through the jail authorities. Law on this point is clear that even if the confessional statement recorded under Sec.32 was retracted, same can be considered as a piece of evidence at the stage of deciding bail matter. Here in this case, the prosecution case is little more

stronger when it is seen that retraction has not been done by the appellant within stipulated time. So there is a confessional statement of the appellant accused recorded under Sec.32 of POTA forming part of charge sheet prima facie involving him with the crime in question. There is nothing on record to indicate that the said confessional statement was by the accused given under compulsion. As per the settled law, confessional statement of the accused is a substantive piece of evidence and can be used against him. The role of the appellant as appearing from the above confessional statement appears to be serious in as much as he tried to arrange some boys to be trained in Pakistan for Jihad using his influence, details of which have been provided in his confessional statement. Even learned Special POTA Court has discussed and considered the same along with other aspects in paragraph no.9 onwards of the impugned order keeping in

mind the law laid down by the Apex Court in State Vs. Nalini (Rajiv Gandhi murder case), AIR 1999 S.C. 2469. The learned Special POTA Court, considering the evidence on record including the confessional statement, role alleged to have been played by the appellant and his illness, prima facie came to the conclusion that there are prima facie evidence on record connecting the appellant with the crime in question and hence, bail of the appellant accused was refused.

7. Having regard to the evidence prima facie appearing on record such as confessional statement, role alleged against the accused and all other aspects of the matter, we are of the opinion that the impugned order passed by the learned Special POTA Court is legal, proper and well reasoned which does not require any interference by this Court in view of the law laid down by the Apex Court in Nalini(supra) as well as in State (NCT of Delhi) Vs. Navjodh

Sandhu (2005)11 SCC p.600. Looking to his illness also, he cannot be released on bail but certainly jail authorities can be directed to provide him best available treatment. Hence, this appeal for bail is required to be rejected.

8. This appeal is accordingly rejected. Jail authorities are directed to provide the appellant best available treatment.

9. The observations in this judgment are made for the purpose of deciding this appeal and hence, they may not prejudice the parties in any other proceedings.

(R.P.DHOLAKIA,J.)

(A.S.DAVE, J.)

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